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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. STEVENS,

Petitioner,

vs.

GATEWAY TRANSPORTATION COMPANY and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

—Consolidated With—

AIELT EVANS,

Petitioner,

vs.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY, INC.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN REPLY TO BRIEF OF RESPONDENT UNION

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BRIEF IN REPLY TO BRIEF OF RESPONDENT UNION

REASONS IN REPLY FOR GRANTING THE WRIT

Petitioners' reply to the Union's brief is identical with the reply to the Company's brief, with the exception of references to the cases of *Flowers* and *Del Costello*, which were mentioned in the Company's brief, and to which we will reply in our Reply to the Company's brief.

Respondents, the employer and the Union, are combined in their efforts to defeat the rights of the Union—paying members, and one is as anti-workman as the other, and their approaches are similar—they both would have *Mitchell*[1] reversed. The language in *Mitchell*, that states on page 64 of the opinion, "Obviously, if New York had adopted a specific 6 year Statute of Limitations for employee challenges to awards of a joint panel or similar body, we would *be bound* to apply that statute under the reasoning of *Hoosier Cardinal*" (Emphasis supplied) is repugnant to the employer-Union combine in the case at bar; they would have the Supreme Court reverse.

A revisitation of *Mitchell* is urged by all parties in their briefs. The Union and employer agree that the Illinois Statute of Limitations should apply. But they make no argument in response to our undisputed statement that the 90 day statute, *by its own provisions*, shall not apply. The 90 day Statute of Limitations specifically states (Chapter 10, Section 112, Illinois statutes):

> "(e) Nothing in this Section or any other Section of this Act shall apply to the vacating, modifying, or correcting of any award entered as a result of

[1] *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56.

> an arbitration agreement which is part of or pursuant to a collective bargaining agreement; and the grounds for vacating, modifying or correcting such an award shall be those which existed prior to the enactment of this Act."

This Section 112 is labeled, "Vacating an Award." Now Chapter 83, Section 16, Illinois Statutes, is entitled "Oral Contracts, Arbitration Awards, Damage to Property . . . ."

The Respondents refer to this as a "catch all" provision. Section 112, the section that the employer and the Union combine to rely on, is entitled "Vacating an Award."[2] Chapter 83, Illinois Statutes, Section 16, the applicable statute, is entitled "Oral Contracts, Arbitration Awards . . . ." Both refer to arbitration awards. Section 16, Chapter 83, specifically refers to arbitration awards, and specifically, without any exceptions as are stated in Chapter 10, Section 112, states a limitation without the exceptions above stated in Section 112. Section 16, Chapter 83, states no exceptions. Section 112, Chapter 10, specifically states that *the act does not apply where there is an arbitration agreement, as there undeniably was in the case at bar.*

Section 16, Chapter 83, Illinois Statutes, entitled "Oral Contracts-Arbitration Awards-Damage to Property-Possessory Actions-Civil Actions" is no more of a "catch all" phrase, as indicated by the Union, in its defense against laborers who are left without representation, as are the provisions of Section 112, Chapter 10, Illinois Statutes, entitled, "Vacating an Award", and which specifically states at Section (e) that "Nothing in this Section . . . shall apply to the vacating, modifying, or correcting of

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[2] Illinois Statutes, Chapter 10, Section 112.

any award entered as a result of an arbitration agreement . . ." There was indisputably an arbitration agreement and an arbitration award in the case at bar.

Mitchell holds that the specific Illinois 5 year Statute of Limitations must apply. Section 112, which provides that the Act shall not apply to the vacating of an award where there is an arbitration agreement, and which applies only to five instances[3] cannot, under *Mitchell*, apply.

Mitchell meets the problem where a dues-paying member is abandoned by his Union, and, perchance, through some source, later learns that he has a remedy and a limitation, which the Union and employer have kept within the secrets of their combine.

The Union makes reference to Section 10(b) (Title 29, Sect. 160(a)(b)).

> Section 10(b) does not give any of the rights and remedies contained in Section 301, but limits its application to cases where (1) there has been interference with the right to organize, (2) there has been discrimination, or (3) there has been a refusal to bargain collectively. Section 10(b) does not, therefore, apply to this case.

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[3] § 112. Vacating an award.

(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing . . . .

(5) *There was no arbitration agreement* . . . .

(Emphasis supplied)

CONCLUSION

For the foregoing reasons, Petitioners respectfully ask this Honorable Court to grant its Writ, directed to the United States Court of Appeals for the Seventh Circuit, and, upon doing so, to reverse the decisions of that Court and to remand these cases for trial.

Respectfully submitted,

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